

SUBJECT: Fisheries Inter-jurisdictional Issues

SUBMITTED BY: Environment Committee

BACKGROUND

Fisheries are a vitally important resource in Canada and are under the jurisdiction of the federal government. However, for inland fisheries, the provinces own the water and fish that comprise any given fishery. Many industrial projects in Saskatchewan are located in areas that may have some impact on fish habitat or waters that may contain fish. In many circumstances industry participants have noticed an increased role taken by the federal Department of Fisheries and Oceans (DFO) in areas where provincial governments have historically taken administrative control. In some circumstances, DFO has actively ignored existing provincial approvals for facilities.

The Chamber of Commerce advocated for amendments to the *Fisheries Act* to reduce the wide application of the Act and restrict its application to Aboriginal, commercial and recreational fisheries among other things.

Parliament passed amendments to the Act in Fall 2013 that limit its application to recreational, Aboriginal, and commercial fisheries and the activities that may result in serious harm to fish in those three types of fisheries. Existing provisions in the Fisheries Act relating to the deposit of deleterious substances remain unchanged. However, the Minister has been given new, discretionary regulation-making powers to authorize the deposit of deleterious substances in a variety of circumstances.

Maximum fines are being increased to \$1 million for individuals and \$6 million for large corporations. Mandatory minimum fines have also been introduced, along with a "doubling procedure" for repeat offenders.

The amendments further allow the Minister to enter into agreements with a province to essentially share administrative functions:

- a. facilitating cooperation between the parties to the agreement, including facilitating joint action in areas of common interest, reducing overlap between their respective programs and otherwise harmonizing those programs;
- b. facilitating enhanced communication between the parties, including the exchange of scientific and other information; and
- c. facilitating public consultation or the entry into arrangements with third-party stakeholders.

The new Section 4.2 provides that if an agreement provides that a provision under the laws of the province is equivalent in effect to a provision of the regulations under the Act, the Cabinet may declare by Order that certain provisions of the Act or of the

Regulations do not apply in the province with respect to the subject matter of the provision under the laws of the province.

More recently, the federal government took a legislative initiative to establish conditions under which the Minister of the Environment may authorize deposits of deleterious substances in waters frequented by fish by way of Ministerial Regulations, in cases where an activity or substance is already well controlled by other federal or provincial risk management instruments, or to authorize aquatic research activities.

ISSUE

Although the recent *Fisheries Act* amendments go a significant distance, further efficiencies could be gained by the province entering into an agreement(s) with the federal government providing for increased efficiency and equivalency.

RECOMMENDED

- 1) That the Government of Saskatchewan enter into an agreement with the federal government:
 - a. facilitating cooperation between the parties to the agreement, including facilitating joint action in areas of common interest, reducing overlap between their respective programs and otherwise harmonizing those programs; and
 - b. facilitating enhanced communication between the parties, including the exchange of scientific and other information.
- 2) That the Government of Saskatchewan review its existing fisheries legislation and administration to determine whether various provisions of provincial legislation may be the subject of an equivalency order under such an agreement.
- 3) That the Government of Canada provide guidance on the continued application of existing policies, such as no net loss and others.
- 4) That the Government of Canada pass regulations under the *Fisheries Act* to authorize deposits of deleterious substances, in cases where an activity or substance is already well controlled by other federal or provincial risk management instruments, or to authorize aquatic research activities.